

State of Wisconsin \ Government Accountability Board

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JUDGE THOMAS H. BARLAND
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KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the Meeting of June 27, 2011

TO: Members, Wisconsin Government Accountability Board

FROM: Kevin J. Kennedy
Director and General Counsel
Government Accountability Board

Prepared Kevin J. Kennedy and Presented by:
Shane Falk and Michael Haas, Staff Counsels

SUBJECT: Challenge to Nomination Papers of Robert Lussow

June 21, 2011 was the deadline for filing nomination papers for offices to be elected in the July 19, 2011 Recall Elections for Senate Districts 12, 22, and 30. On Friday, June 24, 2011 Jacob Hajdu submitted a challenge to the nomination papers of Robert Lussow, a candidate for the office State Senator from the 12 Senate District.

The challenge consisted of two allegations. The first allegation was the nomination papers contained 303 signatures with insufficiencies. This allegation was supported by a 10-page spread sheet, listing by page and signature line number, the alleged insufficiencies. No additional supporting evidence was submitted.

The second allegation was the candidate's Declaration of Candidacy fails to identify a municipality.

Note: This memorandum and recommendation was prepared before the candidate's filed a response. Because staff recommends the candidate's ballot access documents substantially comply with all statutory requirements including a sufficient number of signatures and a sufficient Declaration of Candidacy and the candidate be placed on the ballot for the June 19, 2011 recall primary election, staff prepared this memorandum before evaluating any response filed on behalf of the candidate.

I. Insufficient Signatures

The insufficiency reasons listed on the challenge spread sheet lists can be broken down into 8 general categories. In some categories staff has identified sub-categories. The memorandum analyzes the legal basis for each of the challenges. Attached is a challenge worksheet which summarizes the staff application of our analysis to the challenges.

A. Address Issues.

The challenge spread sheet identifies 11 signatures with address issues. Eight (8) signers' addresses list a PO Box, but no street and number. The agency practice is to accept a PO Box from a nomination paper signer if the post office is within the district. The challenger has offered no evidence the signers do not reside in the 12 State Senate District.

Two signatures are challenged because there is no address.

One signature is challenged because it does not list a house number.

The Board's administrative rules governing nomination paper sufficiency provide that a signer's signature and address information is entitled to a presumption of validity. GAB 2.05 (4). The challenger has not submitted clear and convincing evidence the presumption should be rebutted.

B. Date Issues

The challenge spread sheet identifies 48 signatures with address issues. There is no year listed in the date section for 45 signatures and no date for one (1) signature. The Board's administrative rules provide that if the date can be ascertained from reference to other information on the nomination paper, the signature can be counted. GAB 2.05 (15)(a).

One signature has a date after the date entered for the signature following it on the nomination paper. There is no requirement that signatures need to be gathered or dated in chronological order.

One signature is dated after the certificate of circulator. The Board's administrative rules provide that a signature may not be counted if it is dated after the date of the certificate of circulator. GAB 2.05 (15)(b).

C. Ditto Marks

The challenge spread sheet identifies 1 signature with ditto marks for some of the information, although it does not specify what information has ditto marks. The Board's administrative rules provide that signature shall be counted when identical residential information or dates for different electors are indicated by ditto marks. GAB 2.05 (13).

D. Illegible address and name.

The challenge spread sheet identifies 1 signature with an illegible address and name.

E. Illegible date

The challenge spread sheet identifies 1 signature with an illegible date. The Board's administrative rules provide that if the date can be ascertained from reference to other information on the nomination paper, the signature can be counted. GAB 2.05 (15)(a).

F. Municipality Issues.

The challenge spread sheet identifies 283 signatures with municipality issues. The vast majority of these challenges (278) are based on the suggestion that certification of circulator does not list the circulators municipality of residence. Wisconsin law requires the circulator list his or her residence with street and number, if any, in the certification of circulator. Wis. Stats. §8.15 (4)(a). The Board's administrative rules provide that where any required item of information on a nomination paper is incomplete, the filing officer shall accept the information as complete if there has been substantial compliance with the law. GAB 2.05 (5).

In all cases the circulator provides a street address and a post office name. There is no allegation or evidence to support the information is false. A post office associated with the street and number substantially complies with the statutory requirement to list the circulators residence. The statute does not explicitly require a municipality of residence.

G. No signature

The challenge spread sheet identifies 4 signature lines with no signature.

H. Out of District

The challenge spread sheet identifies 1 signature as out of district. It does not provide any evidence in support of the allegation as required by the Board's administrative rules. GAB 2.07 (5).

II. No municipality listed on Declaration of Candidacy

The challenge alleges the candidate's Declaration of Candidacy fails to identify a municipality of residence. The challenge asserts this failure warrants the Board's refusal to accept the document. Presumably this would mean denying ballot access because a Declaration of Candidacy is required to be timely filed as a condition to having the candidate's name on the ballot. Wis. Stats §8.30 (4).

Wisconsin law requires a candidate to submit a sworn Declaration of Candidacy with the candidate's nomination papers. Wis. Stats §8.21 (1). Among the information required to be listed on the Declaration of Candidacy is the following information for candidates for state or local office: *A statement that discloses the candidate's municipality of residence for voting purposes and the street and number, if any, on which the candidate resides.* Wis. Stats §8.21 (4)(b).

The candidate listed W6275 Camp Rice Point Rd., Tomahawk, Wisconsin 54487 as his present municipality of residence for voting purpose on the Declaration of Candidacy. This address is where the candidate is registered to vote. It is located in the Town of Bradley, Lincoln County. It is in the 12 State Senate District.

While the Town of Bradley, Lincoln County is not listed on the Declaration of Candidacy, according to the agency's Statewide Voter Registration System (SVRS) the street address is located in the Town of Bradley, Lincoln County and the 12 State Senate District. This

substantially complies with the statutory requirement. The candidate can submit an amended Declaration of Candidacy to reflect the address is in the Town of Bradley, Lincoln County.

Recommendation

Staff recommends the Board adopt the following motions:

1. The Government Accountability Board finds the nomination papers submitted by Robert Lussow contain 585 valid signatures as reflected by the staff analysis set out in its memorandum and challenge worksheet which are adopted by the Board and incorporated by reference in this motion.
2. The Government Accountability Board finds the Declaration of Candidacy submitted by Robert Lussow substantially complies with the statutory requirement to list his municipality of residence for voting purposes when he listed a street address with a number, post office and zip code that is located in the Town of Bradley, Lincoln County and the 12 State Senate District.
3. The Government Accountability Board directs the staff to certify Robert Lussow for placement on the ballot for the June 19, 2011 recall primary election.

Candidate Lussow Challenge Work Sheet

1. Name of Challenger - Jacob Hajdu
2. Name of Candidate Challenged – Robert Lussow
3. Office Sought By Candidate – 12th Senate District Recall Election
4. Number Signatures Required For Office Sought - 400
5. Estimated Number of Signatures Submitted By Candidate – 633
6. Number of Signatures Verified By Staff - 588
7. Number of Pages Challenged – 0
8. Number of Correcting Affidavits Filed - 0
9. Total Number of Individual Signatures Challenged – 303
10. Reasons for Challenge to Individual Signatures

A. Address Issues

No address listed (2) Challenge accepted.

No house number (1) Challenge accepted.

PO Box (8) Challenge rejected.

(Note staff inadvertently rejected a signature that listed a PO Box for the address.
Page 50, Line 6)

Recommendation: Reduce the number of valid signatures by 3.

B. Date Issues

Dated after circulator signed (1) Staff already struck. No change.

No year (44) Staff already struck 34. No change. Ten (1))
signatures bracketed by dates within circulation period. Challenge rejected.

No date (1) Challenge rejected.

Signature date after preceding signature date. (1) Challenge rejected.

Recommendation: No change.

C. Dittos (1) Challenge rejected.

Recommendation: No change.

- D. Illegible address and name (1) Staff already struck. No change.

Recommendation: No change.

- E. Illegible date (1) Staff already struck. No change.

Recommendation: No Change.

- F. Municipality Issues

Not a municipality (Irma, Bradley, Harrison, Nakomis, Pine Lake) Challenge rejected.

No municipality listed in certification of circulator (278) Challenge rejected.

Recommendation: No change.

- G. No signature by circulator. (4) Staff already struck. No change.

Recommendation:

- H. Out of District (1) Staff already struck. No change.

Recommendation: No change.

11. Number of Signatures Verified By Staff After Challenge:

Total Initially Verified by Staff: 588

Minus Recommended Challenges: 3

Total Verified After Challenge: 585